

REMARKS/ARGUMENTS

Claims 1-3, 5-14, 16-20, 29-31 and 33 were rejected and remain pending in the instant application. Reconsideration of the claims in view of the amendments and the following remarks is respectfully requested.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-3, 5-14, 16-20, 29-31 and 33 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 7,272,232 (hereinafter “Donaldson”).

It is respectfully submitted that Donaldson fails to teach a method as recited in claim 1 which comprises “incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level, said incrementally increasing further comprising:

first, increasing the second audio volume level by a first predetermined increment,

second, determining that the user has not responded to the second audio signal, and

third, increasing the second audio volume level by a second predetermined increment.”

In “Response to Arguments” on page 19 of the present Final Office Action, the Examiner cited col.2, lines 52-62 of Donaldson and asserted that this cited portion of Donaldson teaches “one audio source can be initially incremented according to a predetermined signal ratio, and afterwards the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established, indicating a different second increment.” However, Applicants respectfully disagree.

Donaldson teaches (in col. 5, lines 17-19) that the audio source with high priority (such as a telephone ring tone) may be raised in volume, combined with the other source (with lower priority, such as a music program) and then output. The cited col.2, lines 52-62 of Donaldson discloses when the volume of the source with high priority arrives at a threshold level, a new signal ratio between the two sources may be established.

It should be noted that the criteria in Donaldson to establish a new signal ratio is the volume of the high priority source reaches a threshold, whereas the criteria in claim 1 is “second, determining that the user has not responded to the second audio signal...”

On page 19 of the present Final Office Action, the Examiner interpreted col.6, lines 35-38 which discloses “in response to audio source B (high priority source) becoming active, the system causes Mixer input B (this is a typo in Donaldson, it should be A the low priority source here) to be reduced to an attenuated level A_A . At time T_2 audio source B becomes inactive and Mixer input A is restored to its previous level A_I ” as disclosing “a determination of the user’s response to the audio signal,” because according to the Examiner, once the user responds to the source signal, it will become inactive.

Even if we assume *arguendo* and *hypothetically* that such interpretation by the Examiner is appropriate (which Applicants disagree), such portion of Donaldson simply teaches when the user responds to the high priority source signal, the low priority source signal will be restored to its previous volume, but it does not explicitly and unequivocally teach “second, determining that the user has not responded to the second audio signal...” and “third, increasing the second audio volume level by a second predetermined increment.”

The case law is well settled that 35 U.S.C. 102 rejections require clear and unequivocal explicit teaching by the reference relied by the Examiner. Accordingly, Applicants respectfully submit the Examiner’s reliance of the portion of Donaldson to assert anticipation is inappropriate and not permitted under 35 U.S.C. 102 jurisprudence.

Therefore, for at least the above reasons, Applicants respectfully submit that Donaldson does not teach every element of claim 1. Claim 1 is therefore allowable over Donaldson under 35 U.S.C. § 102(e).

Claims 10 and 29 have been amended to recite features substantially similar to those of claim 1. Therefore, for at least the same reasons, claims 10 and 29 are also allowable over Donaldson under 35 U.S.C. § 102(e).

Claims 2-3 and 5-9, claims 11-14 and 16-20, and claims 30-31 and 33 depend from claims 1, 10 or 29, respectively. Because these dependent claims incorporate the recitations

of their corresponding base claims, they are allowable over Donaldson under 35 U.S.C. §102(e) for at least the same reasons and for their additional recitations.

CONCLUSION

In view of the foregoing, reconsideration and allowance of pending claims are solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 381-8819. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 500393.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: May 17, 2010 by: /Al AuYeung/

Al AuYeung
Reg. No.: 35,432

Schwabe, Williamson & Wyatt, P.C.
U.S. Bank Centre
1420 5th Ave. Suite 3010
Seattle, WA 98101